

MINUTES OF THE OPEN SESSION OF THE RHODE ISLAND ETHICS COMMISSION

November 6, 2007

The Rhode Island Ethics Commission held its 19th meeting of 2007 at 9:00 a.m. at the Rhode Island Ethics Commission conference room, located at 40 Fountain Street, 8th Floor, Providence, Rhode Island, on Tuesday, November 6, 2007, pursuant to the notice published at the Commission Headquarters and at the State House Library.

The following Commissioners were present:

**James Lynch, Sr., Chair James C. Segovis
Barbara R. Binder, Vice Chair Frederick K. Butler
George E. Weavill, Jr., Secretary Ross Cheit
James V. Murray**

Also present were Kathleen Managhan, Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Katherine D'Arezzo, Senior Staff Attorney; Staff Attorneys Jason Gramitt, Dianne L. Leyden and Esme DeVault; Commission Investigators Steven T. Cross, Peter J. Mancini and Steven Branch; and Commission Administrative Staff Patricia F. Barker and Michelle Berg.

At approximately 9:17 a.m., the Chair opened the meeting. The first

order of business was a motion to approve minutes of the Open Session held on October 23, 2007. Upon motion made by Commissioner Binder and duly seconded by Commissioner Cheit, it was unanimously

VOTED: To approve the minutes of the Open Session held on October 23, 2007.

ABSTENTIONS: Frederick K. Butler and James V. Murray.

The next order of business was advisory opinions. The advisory opinions were based on draft advisory opinions prepared by the Commission Staff for review by the Commission and were scheduled as items on the Open Session Agenda for this date. The first advisory opinion was that of Karen J. Gleason, a member of the Portsmouth Town Council. Staff Attorney Gramitt presented the Commission Staff recommendation. The petitioner was present with her spouse. The petitioner noted an amendment to the facts as outlined on paged 2; she and her spouse will live in the new house and her son will live in the existing house. In response to Commissioner Weavill, she stated that the next election will be in 2008 and she does not anticipate making any appointments to the Zoning Board in the next twelve months. In response to Commissioner Binder, she indicated that she has not made any appointments to the Zoning Board since she has been on the Council.

Upon motion made by Commissioner Weavill and duly seconded by

Commissioner Butler, it was

VOTED: To issue an advisory opinion to Karen J. Gleason, a member of the Portsmouth Town Council.

The next advisory opinion was that of John Michael Karmozyn, Jr., a member of the Burrillville Town Council. Staff Attorney DeVault presented the Commission Staff recommendation. The petitioner was present. In response to Commissioner Binder, the petitioner stated that none of his family members are officers in the senior association.

Commissioner Cheit inquired regarding his title of “liaison” given his representation that it does not involve interaction with the Council. The petitioner indicated that the position provides the association with information and advice regarding town procedures, but does not represent the association before the Council. Commissioner Cheit accepted the petitioner’s representations, but still questioned the use of the term liaison.

Commissioner Segovis expressed his concern that the petitioner wants to participate in the Council’s vote when his organization strongly advocates for the senior center. He commented that the petitioner seems to be a type of officer due to his title and liaison position, which suggests that he has a greater role. The petitioner advised that the senior citizens association formed a senior center task force and asked a few Council members to serve as liaisons. In response to Commissioner Weavill, the petitioner informed that the

liaisons' advisory role is to provide guidance to the senior citizens association. In response to Commissioner Binder, he indicates that such guidance is part of his liaison role.

Chair Lynch inquired if any other organizations have Council liaisons. The petitioner replied that there are four or five, including the library. He also noted that he is a liaison to the Industrial Foundation, but he has no vote. In response to Commissioner Cheit, Staff Attorney DeVault stated that her recommendation would change if the liaison role involved interaction with the Council. Commissioner Cheit expressed his concern regarding setting precedent and suggested that perhaps the petitioner should have a different title. Staff Attorney DeVault suggested that the draft be amended to state that while his general membership does not require recusal under the Code, the Commission finds that the petitioner must relinquish his Council liaison position, but may retain his general membership.

Commissioners Cheit and Weavill indicated that the proposed amendment would address the issue. Commissioner Segovis stated that he still is uncomfortable with the situation and noted that allowing his participation, despite his general membership, does not reflect the reality of the situation. At the Chair's request, Staff Attorney DeVault restated the proposed amendment. In response to Commissioner Weavill, the petitioner advised that if the project goes forward the town would be asked to finance most or all of it. Commissioner Weavill advised the petitioner to be cautious regarding

the appearance of impropriety.

The petitioner asked if he could remain as liaison if he relinquished his general membership. Chair Lynch noted that the Commission is not concerned with the general membership. Commissioner Butler stated that relinquishing his liaison role before participating as a Council member does not remove the conflict, as the appearance issue remains. He queried whether the petitioner could resume his role once the center is built. Commissioner Segovis commented that the Commission has dealt with similar situations in the school budget context by allowing the official to participate in the up or down vote on the bottom line and suggested that this petitioner should not be treated differently. Staff Attorney DeVault distinguished prior opinions relating to officials with family who are members of unions voting on school budgets from the petitioner's situation where he is not a business associate of the senior association.

Commissioner Binder asked how the Commission had handled a prior opinion regarding the Barrington Little League. Staff Attorney Gramitt recalled that the petitioner's spouse was an officer in the league. Commissioner Cheit recalled that the official was allowed to participate but chose to recuse. In response to Chair Lynch, the petitioner informed that there are seven members of the Council. In response to Commissioner Weavill, he stated that another Council member is vice president of the association. Upon motion made by Commissioners Cheit and Binder to adopt the draft advisory opinion,

as amended by Staff, there was discussion. Commissioner Murray stated that the petitioner's membership is not a bar here, but his liaison role is. He suggested that the Commission cannot order him to resign as liaison. Commissioners Cheit and Binder agreed and withdrew their motion and second. Upon motion made by Commissioner Cheit and duly seconded by Commissioner Murray, it was

VOTED: To issue an advisory opinion to John Michael Karmozyn, Jr., a member of the Burrillville Town Council, as amended to state that while the petitioner's general membership does not bar his participation under the Code, the liaison position is a bar.

AYES: George E. Weavill, Jr., Frederick K. Butler, Ross Cheit, James V. Murray, Barbara R. Binder and James Lynch, Sr.

NOES: James C. Segovis.

The next advisory opinion was that of George M. Abbott, a Chariho Regional School Committee member. The petitioner was not present.

Staff Attorney Gramitt presented the Commission Staff recommendation. He indicated his belief that the intent was not to bring in a third family which marries into one's in-laws. He suggested that the Commission could address the issue through advisory opinions on a case by case basis or through a General Commission Advisory defining all of the terms. Commissioner Weavill inquired

whether a recent opinion involving the Central Falls School District contained other factors that allowed the official's participation. Staff Attorney Gramitt noted that there were other factors implicated in that opinion, but none of them would have changed the analysis under Regulation 5004.

Chair Lynch suggested that applying the provisions to a third family might not be a stretch in a small state like Rhode Island. Commissioner Cheit commented that to do so might go too far and ultimately exclude people from participation. Commissioner Binder applied the definitions to her family situation and indicated her belief that both terms would apply to cover the relationship. Commissioner Segovis agreed with the Chair's point, but noted that extending it that far could create technical problems for the Staff with regard to implementation. He acknowledged that there remains a potential for influence but stated his belief that it is too remote. Commissioner Cheit stated that Complaints could be filed against persons who did not realize a family relationship existed. Commissioner Butler agreed that there is a potential for influence but also indicated that it is too much of a stretch. Upon motion made by Commissioner Cheit and duly seconded by Commissioner Segovis, it was

VOTED: To issue an advisory opinion, attached hereto, George M. Abbott, a Chariho Regional School Committee member.

AYES: George E. Weavill, Jr., James C. Segovis, Frederick K. Butler,

James V. Murray and Ross Cheit.

NOES: James Lynch, Sr. and Barbara R. Binder.

The next order of business was a discussion regarding the definitions of family members enumerated in Regulation 5004, Nepotism. Based upon the Commission's vote on the prior advisory opinion, Staff Attorney Gramitt suggested that the discussion may not be necessary. The consensus was that discussion was not needed.

At approximately 10:04 a.m., upon motion made by Commissioner Murray and duly seconded by Commissioner Weavill, it was unanimously

VOTED: To go into Executive Session pursuant to R.I. Gen. Laws § 42-46-5(a) (4), to wit:

a.) Motion to approve minutes of Executive Session held on October 23, 2007.

**b.) In re: Brian Scott,
Complaint No. NF2007-3**

**c.) In re: Kevin Blais,
Complaint No. NF2007-1**

**d.) In re: Anne H. Allen,
Complaint No. 2007-9**

e.) Motion to return to Open Session.

The Commission reconvened in Open Session at approximately 11:30 a.m., without the presence of Commission Administrative Staff. The next order of business was a motion to seal minutes of the Executive Session held on November 6, 2007. Upon motion made by Commissioner Murray and duly seconded by Commissioner Weavill, it was unanimously

VOTED: To seal minutes of the Executive Session held on November 6, 2007.

***Commissioner Segovis left the meeting.**

Chair Lynch reported that the Commission took the following actions in Executive Session: 1) approved minutes of the Executive Session held on October 23, 2007; 2) took no action on Complaint No, NF2007-3, In re: Brian Scott, which was informally resolved prior to a probable cause hearing; 3) found that probable cause exists to support a knowing and willful violation of the Code of Ethics in the matter of In re: Kevin Blais, Complaint No. NF2007-1; and 4) dismissed Complaint No. 2007-9, In re: Anne H. Allen for insufficient allegations to support a knowing and willful violation of the Code of

Ethics.

***Commissioner Segovis returned at approximately 11:32 a.m.**

The next order of business was a Financial Disclosure Update regarding Operation Compliance. Chief Investigator Steven T. Cross advised that there is a 94% compliance rate for filing the 2006 Financial Statement. He reported that 100% of the judiciary, general officers and legislators have complied. Fifteen of the sixteen non-filing complaints filed by Staff settled prior to probable cause, resulting in \$6,625 in assessed penalties. Investigator Cross informed that there has been an increase in requests for these Commission documents, noting that federal authorities take interest in records received by the Commission via US mail. He stated that all financial statements filed this year have been scanned and the Staff can immediately respond to request for records by emailing a PDF file.

Commissioner Weavill inquired regarding the status of electronic filing. Investigator Cross reported that the Director and Staff have discussed the issue and intend to form a study group, including some Commission members, to look at its feasibility. He indicated that the group would report back to the Commission next year on issues related to fiscal costs, technology, personnel, privacy and confidentiality. In response to Commissioner Weavill, he noted that online filing would not be effective in 2008, but could potentially be in

2009. Commissioner Segovis inquired if other agencies were online with financial disclosure and voiced his support for a task force to examine the issues and report back.

Commissioner Cheit asked for information regarding hardship waivers for financial disclosure complaints. Investigator Cross explained that it involves a detailed process with discussion and input from the investigator, prosecutor and Director. He informed that the Staff would obtain written substantiation of the situation. He noted that two recent waivers, which included the imposition of no penalty and a penalty of \$125, involved serious health and financial situations.

In response to Commissioner Murray, Investigator Cross advised that the scanned financial statements are not available on the website yet, but that is one of the issues that the study group would explore. Director Willever stated that Operation Cyber Expedition would look at the pros and cons of these online access issues, including costs, legal and personnel implications and what other jurisdictions do. He indicated that if the Commission proceeds in these areas, Operation Cyber Disclosure would be a dynamic process. Commissioner Cheit suggested that Darryl West would be a good contact for information regarding what other agencies provide in terms of online access. Director Willever noted that the Staff is already utilizing COGEL for related information.

The next order of business was the Director's Report. Executive Director Willever reported that there are eight complaints and two advisory opinions pending. He informed that the advisory opinion backlog has been eliminated. He stated that there have been no formal APRA requests since the last meeting. In response to Commissioner Weavill, he advised that he wrote two letters to the Attorney General's Office requesting assistance with collecting outstanding fines and received a negative reply. He indicated that Staff Attorney Leyden has been researching the matter and they have identified individuals against whom the Commission will proceed. Commissioner Weavill expressed that it is important to take action to collect the fines. Commissioner Cheit suggested that the outstanding fines be posted on the website.

In response to Commissioner Murray, Director Willever stated that he had submitted a formal request for assistance to the Attorney General's Office, which had been assisting the Board of Elections with collections. He reported that the response was that there were no assets to continue such representation. Commissioner Butler inquired whether assets to assist with collections could be part of the budget process, particularly given that the fines go to the state itself. Director Willever replied that it could be a consideration in next year's process, but he just recently received the negative response.

At approximately 11:51 a.m., upon motion made by Commissioner Cheit and duly seconded by Commissioner Binder, it was

unanimously

VOTED: To adjourn the meeting.

Respectfully submitted,

George E. Weavill, Jr.

Secretary